

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NOS.4500 TO 4503 OF 1995  
With  
CROSS OBJECTIONS 159, 160, 161 & 163 Of 1999  
With  
FIRST APPEAL NOS.4504 Of 1995  
With  
FIRST APPEAL NO.4505 OF 1995  
With  
CROSS OBJECTION NO.164 OF 1999  
With  
FIRST APPEAL NO.4505 OF 1995  
With  
FIRST APPEAL NO.4506 OF 1995  
With  
CROSS OBJECTION NO.162 OF 1999  
With  
FIRST APPEAL NOS.7378/95 To 7381/95  
With  
CROSS OBJECTION NOS.370, 369 AND 368/97  
With  
CIVIL APPLICATION NOS.11148 TO 11158 OF 2000

Hon'ble MR.JUSTICE Y.B.BHATT

and

Hon'ble MR.JUSTICE M.C.PATEL

=====

1. Whether Reporters of Local Papers may be allowed : YES  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

-----  
STATE OF GUJARAT.

Versus

PARBAT NAJA AYAR.  
-----

Appearance:

Mr. S.N. Shelat, Addl.A.G. with Mr. N.D. Gohil for  
appellant-State in FA Nos.7378, to 7381/95

Mr. A.D. Oza, GP with Mr. N.D. Gohil for the Appellant  
State in other Appeals and for Respondents in Cross  
Objections.

Mr. Y.S. Lakhani for the respondent-claimants in Appeals  
and for Cross-objectors in Cross-Objections.  
-----

CORAM : MR.JUSTICE Y.B.BHATT  
and  
MR.JUSTICE M.C.PATEL

Date of decision: 05/12/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE Y.B.BHATT)

1. These are appeals under Section 54 of the Land  
Acquisition Act read with Section 96 of the Civil  
Procedure Code at the instance of the Special Land  
Acquisition Officer challenging the common judgement and  
awards passed by the Reference Court under section 18 of  
the said Act.

2. The first and primary contention raised in the  
present group of appeals by the learned counsel for the  
appellants is on the question of limitation. It was  
contended that the references under section 18 were time  
barred and that therefore the references should have been  
rejected on this ground alone.

3. On examination of the judgement of the Reference  
Court we find that no specific issue on the question of  
limitation is reflected in the judgement. However, it is  
also apparent that the parties were ad idem as to the  
existence of this controversy and that both the parties  
have addressed the court on this aspect. The Reference  
Court has also dealt with various submissions of the  
respective parties on this question, and ultimately  
decided that the references were filed within the period  
of limitation.

4. However, we find that the finding recorded by the

Reference Court that the references were within the period of limitation is a finding not based on any evidence whatsoever, but is based merely on acceptance of the submission made by the counsel for the original claimants.

5. We find that it is not the case of the State that the claimants were present when the awards were declared. Thus, the limitation would not begin to run from the date of declaration of the award. From the contentions of the respective parties, as reflected in the impugned judgement, it appears that the decision on the question of limitation would depend upon the establishment of certain facts, which facts have not been established on record. The relevant facts would be as to whether notices under section 12(2) of the Act were served on the claimants, and if so, whether the references were filed within six weeks from the date of such service. If notices under section 12(2) were not served on the claimants, then the relevant consideration would be as to whether the reference applications were filed within the period prescribed in clause (ii) of section 18(2) of the Act.

6. Thus, the vital questions for the determination of this issue revolve around questions of fact, which have not been established on record by either side. In this situation the observations of the Supreme Court in the case of Ram Kali Bhattacharjee Vs. State of W.B., reported at 1995 Supp(3) SCC 314 become relevant. The Supreme Court has observed in the said decision that it is not desirable to decide the controversy as to the question of limitation, where there is paucity of evidence, and there is no factual foundation for deciding the issue. The Supreme Court, therefore, thought it appropriate to remand the matter to the Reference Court to determine the relevant questions of fact by recording further evidence on that aspect.

7. Furthermore, even on the merits of the matter we find that the original claimants have led evidence, which may or may not have been strictly proved according to the rules of evidence. In this context the interests of justice require that this opportunity should not be denied to the claimants since the matters as aforesaid require to be remanded back to the Reference Court.

8. As a result of the hearing and discussion a broad consensus has been arrived at between the learned counsel for the respective parties on the basis of which the following directions are given.

[A] The matters are remanded back to the Reference Court for recording additional evidence on all facts relevant to the question of limitation, and also relevant for proving and bringing on record the appropriate evidence on the part of the claimants. In short, both the sides shall be at liberty to lead appropriate evidence on the relevant aspects.

[B] The Reference Court shall deal with the matter as expeditiously as possible and preferably before 30th June 2001.

9. In the premises aforesaid the impugned judgement and awards of the Reference Court are quashed and set aside. The appeals filed by the State are, therefore, allowed with no order as to costs. The Cross-Objections filed by the original landholders are permitted to be withdrawn before effective hearing.

10. In view of our findings and directions recorded in the present judgement, no specific orders are necessary on the Civil Applications and the same are accordingly disposed of with no order as to costs.

11. The Registry is directed to transmit the record and proceedings back to the Reference Court forthwith i.e. not later than 14th December 2000.

\*\*\*\*\*

\*ar\*